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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

RIANA BUFFIN and CRYSTAL  
PATTERSON, on behalf of themselves and  
others similarly situated,

Plaintiffs,

v.  
VICKI HENNESSY in her official capacity  
as the San Francisco Sheriff, *et al.*,

Defendants.

CASE NO. 4:15-cv-04959-YGR

**NOTICE OF STIPULATED FINAL  
JUDGMENT REMEDYING  
CONSTITUTIONAL VIOLATION**

1        Plaintiffs and Defendant the San Francisco Sheriff are pleased to inform the Court that,  
 2 with the assistance of Chief Magistrate Judge Spero, they have reached agreement as to the  
 3 appropriate remedy to be imposed in this case, with two exceptions. The Stipulated Final  
 4 Judgment Remedying Constitutional Violation is attached as **Exhibit A**.

5        First, the parties have agreed to modify the procedures for seeking alterations on release,  
 6 as currently reflected in California Penal Code § 1269c, in two ways: (1) pursuant to Section IV.A  
 7 of Exhibit A, for arrestees charged with an offense not enumerated in California Penal Code  
 8 § 1270.1, a peace officer may file a declaration to extend the 18-hour automatic release deadline  
 9 by 12 hours if there is reasonable cause to believe that an arrestee may not appear at arraignment,  
 10 or poses a threat to public safety; and (2) pursuant to Section IV.B of Exhibit A, for arrestees  
 11 charged with offenses not enumerated in California Penal Code § 1270.1(a), the arrestee or their  
 12 attorney, friend or family member shall have the right to submit an application under § 1269c to  
 13 the magistrate or commissioner seeking a swifter judicial determination and release than the  
 14 automatic 18-hour release provision. Plaintiffs also seek to modify these procedures a third way  
 15 (Section IV.C), which is to provide all arrestees charged with offenses enumerated in California  
 16 Penal Code § 1270.1(a) the right to submit an application (by the arrestee or their attorney, friend  
 17 or family member) under § 1269c to the magistrate or commissioner seeking OR release prior to  
 18 arraignment. The Sheriff does not stipulate to this provision and takes no position on whether the  
 19 Court should adopt it. The parties agree that the Court's decision on this issue shall not impact  
 20 any other provision of the stipulated final judgment.

21       Second, per Section VI of Exhibit A, the parties have not reached agreement as to  
 22 attorneys' fees and costs, and expect to submit briefs on the matter to the Court following the entry  
 23 of final judgment if an agreement as to fees and costs cannot ultimately be reached.

24       We respectfully request that the Court enter final judgment at its earliest convenience, so  
 25 that the relevant time periods for implementation can begin. We would of course be pleased to  
 26 address any questions the Court may have.

27       //

28       //

1 Dated: August 30, 2019

Respectfully submitted,

2 LATHAM & WATKINS LLP  
3 Robert E. Sims  
4 Sadik Huseny  
5 Tyler P. Young

6 By: /s/ Sadik Huseny  
7 Sadik Huseny

8 *Attorneys for Plaintiffs*  
9 *Riana Buffin and Crystal Patterson*

10 Dated: August 30, 2019

11 Respectfully submitted,

12 DENNIS J. HERRERA  
13 City Attorney

14 By: /s/ Jeremy M. Goldman  
15 Jeremy M. Goldman

16 *Attorneys for Defendant*  
17 *Sheriff Vicki Hennessy*

## **SIGNATURE ATTESTATION**

I, Sadik Huseny, am the ECF user whose ID and password are being used to file this Notice of Stipulated Final Judgment Remedy Constitutional Violation. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from each of the other Signatories.

Dated: August 30, 2019

/s/ Sadik Huseny  
Sadik Huseny

# **EXHIBIT A**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

RIANA BUFFIN and CRYSTAL  
PATTERSON, on behalf of themselves and  
others similarly situated,  
Plaintiffs,  
v.  
VICKI HENNESSY in her official capacity  
as the San Francisco Sheriff, *et al.*,  
Defendants.

CASE NO. 4:15-cv-04959-YGR  
**STIPULATED FINAL JUDGMENT  
REMEDIYING CONSTITUTIONAL  
VIOLATION**

1           As set forth in the Order Granting Plaintiffs' Motion for Summary Judgment, the San  
 2 Francisco Sheriff's Department's use, as required by current California law, of the Superior Court  
 3 of California, County of San Francisco Felony-Misdemeanor Bail Schedule ("Bail Schedule")  
 4 violates the 14th Amendment of the U.S. Constitution. Accordingly, to remedy the Constitutional  
 5 violation and harm, and pursuant to stipulation by the parties, the Court orders the following for  
 6 purposes of pre-arrainment release procedures:

7           (I)       The San Francisco Sheriff's Department (hereafter "Sheriff") is enjoined from  
 8 using the Bail Schedule, or any form or derivative thereof that requires or has as its  
 9 effect that the existence and duration of pre-arrainment detention is determined by  
 10 an arrestee's ability to pay.

11          (II)      For all arrestees booked on an offense not enumerated in California Penal Code  
 12 § 1270.1(a), and who are arrested without a warrant and are not otherwise ineligible  
 13 for pre-arrainment OR release under state law:

14           (A)      The arrestee's PSA Report, along with all other portions of the OR  
 15 Workup reasonably available to the OR Project, shall be submitted to  
 16 the San Francisco Superior Court within eight (8) hours from the time  
 17 of booking.<sup>1</sup>

18           (B)      The Sheriff shall release the arrestee at eighteen (18) hours from the  
 19 time of booking if: (1) the Superior Court has not rendered a decision  
 20 on OR release at that time (which decision shall otherwise control) and  
 21 (2) the PSA Report for the arrestee does not indicate "release not  
 22 recommended."

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23          <sup>1</sup> For purposes of this Stipulated Judgment, "Own Recognizance" or "OR" release refers to any  
 24 release not conditioned on payment of bail, and includes releases subject to any non-financial  
 25 conditions. The OR Workup refers to the report created by the OR Project of the San Francisco  
 26 Pretrial Diversion Project (hereafter, "OR Project") which contains the arrestee's criminal  
 27 history, the police report, a cover sheet, and the PSA Report. "Booking" refers to the time that  
 28 ID confirmation for an arrestee is received. The Sheriff shall maintain all reasonable procedures  
 to ensure that ID confirmation is received as swiftly as possible. To the extent circumstances  
 beyond the OR Project's or the Sheriff's control render the completion of the PSA Report  
 impossible within eight (8) hours, the OR Project will exercise best efforts to complete the PSA  
 Report as soon as feasible. The automatic release provision of Section II does not apply in cases  
 where the OR Project has been unable to complete the PSA Report for reasons beyond the OR  
 Project's or the Sheriff's control.

1 (C) Release pursuant to this Section shall treat as binding the  
2 recommendation of the PSA Report as to any conditions of release, and  
3 release procedures shall be carried out as if the release  
4 recommendations in the PSA Report had been adopted by the Superior  
5 Court. No arrestee shall be entitled to release without signing an  
6 agreement to be bound by the conditions of release contained in the  
7 PSA Report's recommendation. An arrestee who is being released  
8 subject to recommended Assertive Case Management (ACM)  
9 procedures by the OR Project shall not be released from custody before  
10 completing any procedures necessary to implementing the release  
11 conditions.

11       (III) For all arrestees booked on an offense enumerated in California Penal Code  
12           § 1270.1(a), for whom pre-arraignement OR release is not available under current  
13           law, the provisions of Section II shall not apply.

14 (IV) The procedures for seeking alterations on release, as currently reflected in  
15 California Penal Code § 1269c, shall be modified as follows:

16 (A) For all arrestees booked on an offense not enumerated in California  
17 Penal Code § 1270.1(a), a peace officer who (1) has reasonable cause  
18 to believe that an arrestee may not appear at arraignment, or poses a  
19 threat to public safety, or (2) expects that specific information not yet  
20 provided will be delivered within the next twelve (12) hours and will  
21 probably provide reasonable cause to believe that an arrestee may not  
22 appear at arraignment, or poses a threat to public safety, shall prepare  
23 a declaration under penalty of perjury setting forth the facts and  
24 circumstances in support of his or her belief and file it with a magistrate  
25 or commissioner. Such a declaration may be filed at any point  
26 throughout the 18-hour period referenced in Section II, and will,  
without further judicial action, serve to extend the 18-hour period by  
an additional twelve (12) hours.

(B) For all arrestees booked on an offense not enumerated in California Penal Code § 1270.1(a), the arrestee or their attorney, friend or family

1 member shall have the right to submit an application under California  
2 Penal Code § 1269c to the magistrate or commissioner seeking a  
3 swifter judicial decision than the automatic 18-hour release provision  
4 provided for in Section II. Such an application shall not alter the  
5 obligation in Section II.A.

6 (C) For all arrestees booked on an offense enumerated in California Penal  
7 Code § 1270.1(a), the arrestee or their attorney, friend or family  
8 member shall have the right to submit an application under California  
9 Penal Code § 1269c to the magistrate or commissioner seeking OR  
release prior to arraignment.

10 (V) The obligations of this Stipulated Judgment are conditioned on the enactment of  
11 legislation by the City and County of San Francisco approving the Stipulated  
12 Judgment and providing additional funding to enable the OR Project to operate  
13 twenty-four (24) hours a day, seven (7) days a week. The Sheriff shall expend all  
14 reasonable efforts to seek a final vote on the enactment of such legislation within  
15 ninety (90) days of entry of this Stipulated Judgment. The Stipulated Judgment  
16 shall take full effect ninety (90) days after the enactment of such legislation. If the  
17 City and County of San Francisco has, notwithstanding the Sheriff's efforts, not  
18 enacted such legislation within ninety (90) days of entry of this Stipulated  
19 Judgment, the Stipulated Judgment shall be vacated, and unless the parties jointly  
20 notify the Court that they have agreed to extend the time, the Court shall issue its  
own final judgment in this matter.

21 (VI) The parties shall separately file, and the Court shall separately rule, on the issue of  
22 attorneys' fees and costs.

23 (VII) The Court shall retain jurisdiction over this matter until eighteen (18) months after  
24 the terms of this injunction go into full effect pursuant to Section V, and Plaintiffs  
25 shall be provided comprehensive reports every three (3) months in order to monitor  
26 the Sheriff's compliance with this Stipulated Judgment and its efficacy at  
27 remedying the constitutional harm, and to bring matters to the Court's attention as  
28 appropriate. The parties shall meet and confer in good faith so as to ensure the  
reports provided are sufficient for such monitoring purposes. The Sheriff will make

1 good faith efforts to begin to gather data regarding time of arraignment for all  
2 arrestees. The reports are currently expected to include:

- 3 • Data regarding arrestees' initiation of booking, charges, time of ID  
4 Confirmation, and time of PSA Report submission and OR Workup  
submission(s);
- 5 • Data regarding PSA Report recommendations;
- 6 • Data regarding the operation of Section II, including but not limited  
7 to data regarding the arrestees deemed ineligible for pre-arraignement  
release pursuant to Section II.B;
- 8 • Data regarding OR judicial decisions;
- 9 • Data regarding all automatic releases pursuant to Section II;
- 10 • Data regarding individual arrestees' total length of incarceration and  
the manner and timing of any release;
- 11 • Data regarding the number of affidavits submitted by peace officers  
pursuant to Section IV.A, including information on timing;
- 12 • Data regarding the number of applications submitted on behalf of  
arrestees pursuant to Sections IV.B and IV.C, including information  
on timing and ultimate determinations, to the extent such  
information (if any) is available.

15 The first report shall include data from the year prior, including and up to the first  
16 three months from the date the provisions of this Order become operative and shall  
17 be due thirty (30) days after the expiration of that period, with additional reports to  
18 be filed every three months thereafter. This provision imposes no obligation except  
19 as to data in the possession of the Sheriff or the OR Project, or reasonably available  
20 to them, and shall not require the provision of data other than is maintained or will  
be maintained in the ordinary course of business.

21 (VIII) This Stipulated Judgment is intended to address the timing of release decisions pre-  
22 arraignment and is not otherwise intended to interfere with changes to the processes  
23 by which the Superior Court makes release determinations, including changes to  
24 the way in which risk assessments are conducted or by which entity they are  
25 conducted. Nothing in this Stipulated Judgment shall prevent the Sheriff from  
26 releasing any person subject to terms of pretrial release who has received an  
27 individualized determination by a judicial officer.

(IX) To the extent the Superior Court, California legislature, or any other entity seeks to implement material changes that may implicate the terms of this Stipulated Judgment or the pre-arraignement processes set forth herein, including to the manner in which high risk arrestees may be identified by the PSA Report for the purposes of the exception to the automatic release provisions of Section II.B, the parties shall meet and confer over potential alterations to the terms of this Stipulated Judgment and thereafter notify this Court of any joint proposal or inability to reach agreement, which may include petitioning the Court to dissolve or modify the Stipulated Judgment.

Dated:

The Hon. Yvonne Gonzalez Rogers  
United States District Judge